

**IN THE HIGH COURT OF GUJARAT AT
AHMEDABAD**

CIVIL REVISION APPLICATION No.961 of 1982

For Approval and Signature:

THE HON'BLE MISS JUSTICE R.M.DOSHIT

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 of any order made thereunder ?
 - 5 Whether it is to be circulated to civil judge?
- =====

SHRIMALI BRAHMIN GNATI SHAMVEDI SHAKHA BRAHMAPURI TRUST & 13 -
Petitioner(s)

Versus

PRABHASHANKER VELJI MEHTA & 4 - Respondent(s)

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Appearance :

MR SURESH M SHAH for Petitioners

RULE SERVED for Respondent No(s).: 1,2.

DELETED for Respondent No(s).: 3,4.

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CORAM :THE HON'BLE MISS JUSTICE R.M.DOSHIT

Date : 30/06/2005

ORAL JUDGMENT

Feeling aggrieved by the judgment and order dated 30th January, 1982 passed by the learned Assistant Judge, Jamnagar in Regular Civil Appeal No. 67 of 1981, the

respondents-defendants in Regular Civil Suit No. 336 of 1975, have preferred the present Revision Application under Section 29 (2) of the Bombay Rents, Hotel & Lodging House Rates Control Act, 1947 {hereinafter referred to as, "**the Rent Act**"}. .

The respondents-plaintiffs are the tenants in the suit rooms of the building situated at Pancheshwar Chowk, Jamnagar, owned by the petitioners-defendants. The landlord, defendant no.1 is a Trust and rest of the defendants are the managing trustee and the members of the Managing Committee of the Trust [hereinafter referred to as, "**the Trust**"].

The plaintiffs-tenants instituted Regular Civil Suit No. 336 of 1975 in the Court of learned Civil Judge [SD], Jamnagar for permanent injunction restraining the Trust from making construction over the Padthar [the corridor] at the rear of the suit rooms. It appears that the suit building belongs to the Trust. The rooms abutting on the main road have been leased to the plaintiffs. The Trust intends to make construction over the corridor running parallel to the suit rooms at the rear. The plaintiffs claim that each plaintiff was leased a room alongwith part of padthar [part of the corridor] and right to fetch water from the well situated in the compound. The

plaintiffs, therefore prayed for permanent injunction restraining the Trust from making construction over the suit corridor and thereby evicting the plaintiffs from part of the premises leased to them. The plaintiffs also claimed that the plaintiffs had a right to air and light through the door at the rear of the suit rooms opening on the suit corridor. If the Trust were permitted to make construction over the suit corridor, the plaintiffs' right to air and light and to fetch water from the well would be jeopardized. The suit was contested by the Trust. The Trust denied that the suit rooms were leased to the plaintiffs alongwith the corridor on the rear or that the plaintiffs had a right to air and light through the rear door of the suit rooms or to fetch water from the well. The learned Civil Judge, by judgment and order dated 27th March, 1981, dismissed the suit and passed decree in favour of the Trust. It was held that the plaintiffs were leased the independent rooms and not the padthar [part of the corridor], as alleged. If the plaintiffs were using the suit corridor and were permitted to fetch water from the well, that was by permissive user and no tenancy was created in favour of the plaintiffs.

Feeling aggrieved, the plaintiffs preferred above referred Regular Civil Appeal No. 67 of 1981 in the Court of learned District Judge, Jamnagar. The learned

Assistant Judge, by the *impugned* judgment and order dated 30th January, 1982, allowed the Appeal and issued perpetual injunction restraining the Trust from making any construction over the suit corridor till the Trust obtained a decree in its favour under Section 13 (1)(ii) of the Rent Act. Therefore, the present Revision Application.

The lower appellate court has confirmed the finding that the plaintiffs were tenants in the suit rooms. The padthar or the compound within was not leased to the plaintiffs. However, the padthar was appurtenant to the suit rooms, and therefore, had formed part of the leased premises as envisaged by Section 5 (8) of the Rent Act. The lower appellate court has repeatedly held that, "**..On appreciation of the evidence adduced by the parties, the learned trial Judge has rightly held that only rooms have been let to the plaintiffs and that the Padthar has not been let out separately. He has also rightly held that on appreciation of the evidence that the plaintiffs have no rights in or over fali and/or suit well as tenants ... It is an established fact that the suit Padthar has not been let separately to the plaintiffs alongwith the suit rooms.**" As to the right to draw water from the well, the lower appellate Court held that, "**..Drawal of water from the Well cannot be said to be the essential service or**

supply in respect of the premises let to them. Their right to have access to the suit well through the fali, at the most can be said to be a permissive right..” Having thus recorded finding in favour of the Trust, the lower appellate court proceeded to hold that, “....the padthar being adjacent to the suit rooms and lying open and vacant must have been usually enjoyed or occupied with the rented premises by the plaintiffs.” Considering the definition of the word, “premises” appearing in Section 5 (8) of the Rent Act, the lower appellate court held that, “the word “Premises” is very exhaustive and it includes ground, godown, garage, outhouse, etc. which are appurtenant to the suit building or portion of the building. Padthar being appurtenant to the suit rooms of the plaintiffs, had formed the premises as envisaged by Section 5 (8) of the Rent Act. Thus, any portion or place which is usually occupied by or enjoyed with the premises would attract the operation of the Rent Act.”

Evidently, the lower appellate court has failed in construing the definition of the word “premises” appearing in Section 5 (8) of the Rent Act. The lower appellate Court has proceeded on the premise that the land adjacent to the leased premises would automatically form part of the leased premises and would attract the provisions of the Rent Act. In my opinion, the lower

appellate court has manifestly erred in construing Section 5 (8) of the Rent Act and in holding that the padthar [suit corridor] forms part of the suit premises leased to the plaintiffs. As both the Courts below have recorded concurrent finding that the padthar [suit corridor] was not leased to the plaintiffs, the suit for injunction instituted by the plaintiffs shall necessarily fail.

In view of the above discussion, the Revision Application is allowed. The judgment and order dated 30th January, 1982 passed by the learned Assistant Judge, Jamnagar in Regular Civil Appeal No. 67 of 1981 is quashed and set-aside. The judgment and order dated 27th March, 1981 passed in Regular Civil Suit No. 336 of 1975 is restored. Rule is made absolute with cost.

{Miss R.M Doshit, J.}

Prakash*